

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of
XXXXX
Petitioner

File No. 90583-001

v
Blue Care Network of Michigan
Respondent

Issued and entered
this 12th day of August 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On June 24, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On June 30, 2008, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

The issue in this matter can be resolved by analyzing the Blue Care Network BCN10 certificate of coverage and its related "Healthy Blue Living" rider. It is not necessary to obtain a medical opinion from an independent review organization. The Commissioner reviews contractual issues under MCL 500.1911(7).

II
FACTUAL BACKGROUND

Effective December 1, 2007 the Petitioner was conditionally enrolled in Blue Care Network's Health Blue Living Program which is described in the rider as "the BCN coverage program designed to promote or maintain good health and/or prevent disease or the progression of disease for Members in the Program. The Program rewards Members that

maintain or adopt healthier behaviors by making lower copayments, and or coinsurance and deductibles available to those Members.” These enhanced benefits are available to members who achieve 80 points on BCN’s Health Living enrollment form. BCN terminated the Petitioner’s enrollment in the Healthy Living Program on March 1, 2008 and returned him to the standard plan. The Petitioner unsuccessfully appealed his termination from the program.

The Petitioner exhausted BCN’s internal grievance process and has received its final determination letter dated May 16, 2008.

III ISSUE

Did BCN properly deny the Petitioner continued coverage in the Healthy Blue Living Program?

IV ANALYSIS

Petitioner’s Argument

The Petitioner wants retroactive coverage in the HBL Program effective March 1, 2008.

In a letter dated April 9, 2008, the Petitioner wrote:

I am writing this letter to express my deep regret at not filling in the Health Risk Assessment form online as per the Health Living Pack stipulated. As a result I have been placed in the standard program and my prescription co-pay has doubled to \$40 for brand name drugs.

As an allergy sufferer I am required by my Allergist to take at least three medications daily, those being; Advair, Fexofenadene and Singulair. Two of those three medications are brand name which does not include paying for the allergy injections that I receive once a week.

I realize that I was solely at fault for not filling in the form but as you can see I have since filled in the required form and everything else is up to date.

The Petitioner argues that he did not get a reminder about when the forms were due. In addition, he was suffering badly from allergies and also experienced extreme personal issues

that made it difficult to cope. He says, "My mind has been elsewhere...and in trying to pick up the pieces I missed the deadline...."

The Petitioner is therefore asking that BCN reinstate his enrollment in the "Healthy Blue Living" enhanced benefit program due to his life circumstances.

Petitioner believes that his enrollment should be reinstated retroactive to March 1, 2008.

Respondent's Argument

In its final adverse determination, BCN denied Petitioner participation in the HBL Program beyond March 1, 2008, telling the Petitioner, "The required documentation to remain in the Enhanced benefit level was not submitted within the approved enrollment time period. We did not receive your health risk appraisal (HRA). Therefore, we have maintained our decision, and your contract will remain in the Standard benefit level. You may re-apply for our enhanced benefit at your next open enrollment."

Commissioner's Review

The issue in this case is whether BCN properly denied continued coverage in its HBL rider's enhanced benefit program. The rider describes the requirements for continuing coverage in the HBL program after 90 days. The rider includes the following provision:

HOW TO EARN THE HEALTHY LIVING ENHANCED BENEFITS IN THE FIRST YEAR OF ENROLLMENT

Upon enrollment each Healthy Living Eligible Member will receive Enhanced Benefits for a 90-day period. To continue receiving the Enhanced Benefits each Healthy Living Eligible Member must take the following steps:

1. Within 90 days of enrollment each Healthy Living Eligible Member must complete a Health Risk Assessment (HRA) and a Healthy Living Enrollment Form which will assess the Member's medical condition and/or lifestyle behavior in relation to the following areas:
 - Blood pressure
 - Smoking
 - Cholesterol
 - Blood sugar
 - Weight
 - Alcohol use

BCN notes that the Petitioner's enrollment was effective December 1, 2007. This enrollment was contingent on the Petitioner meeting the requirements of the rider listed above by February 29, 2008, to remain in the enhanced plan. The Petitioner has acknowledged that he failed to submit his HRA prior to the February 29, 2008 deadline.

The Commissioner is sympathetic to the Petitioner's circumstances that prevented him from submitting his HRA in the allowed time. The Commissioner, however, is unable to order the remedy sought by the Petitioner. Under the Patient's Right to Independent Review Act, the Commissioner's role is limited to determining whether BCN properly administered the benefits under the terms and conditions of the Petitioner's certificate and its riders and state law. Nothing in the certificate or state law requires BCN to waive its time limits in this case.

The Commissioner finds that BCN's denial is consistent with its Healthy Blue Living rider.

V ORDER

The Commissioner upholds BCN's May 16, 2008, final adverse determination. BCN's denial to reinstate the Petitioner's enrollment in the Healthy Blue Living enhanced benefit program is consistent with the rider.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.